

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID KETCHUM,

Plaintiff,

Case No. 10-cv-14749

v.

Honorable Thomas L. Ludington

RANDY KHAN, et al.,

Defendants.

**ORDER DENYING APPLICATION TO PROCEED WITHOUT PREPAYING FEES
AND CERTIFYING INTERLOCUTORY APPEAL AS FRIVOLOUS**

This case concerns an excessive force claim, pursuant to 42 U.S.C. § 1983, made by Plaintiff David Ketchum regarding an arrest by Michigan State Police Troopers. Ketchum began by proceeding pro se, but the Court appointed counsel for him on June 22, 2015. ECF No. 58. Ketchum and his counsel, Pepper Hamilton, immediately began experiencing difficulties. On September 10, 2015, Ketchum, acting pro se, filed a motion to prevent one of his defense attorneys from representing him. ECF No. 64. Ketchum's counsel then filed a motion for leave to withdraw from representation of Ketchum. ECF No. 66. On August 4, 2016, the Court issued an order denying both motions and instructing the parties to make another effort at cooperation. ECF No. 77. However, the Court advised Ketchum that, if it became necessary to remove Pepper Hamilton, Ketchum would "return to pro se status" and, because "the case was trial-ready the last time Ketchum was pro se," it would be reset for trial. *Id.* at 5.

On October 7, 2016, Pepper Hamilton filed a renewed motion to withdraw as counsel. ECF No. 83. In the motion, Pepper Hamilton provided facts sufficient to show a precipitous

breakdown in communication between the parties. On November 1, 2016, the Court granted that motion. ECF No. 84. In that order, the trial date was reset for February 28, 2017.

On December 9, 2016, Ketchum filed a motion for appointment of counsel. The Court denied that motion, ECF No. 89, noting that “Ketchum has consistently shown a refusal to cooperate in good faith with his appointed attorneys.” *Id.* at 3. On January 23, 2017, Ketchum filed a notice of appeal of the Court’s order denying his motion for appointment of counsel. ECF No. 92. On March 6, 2017, Ketchum submitted an application to proceed on his appeal without prepaying fees or costs.

Ketchum is attempting to appeal a nondispositive decision by the Court. Because Ketchum’s case is still pending before the Court, he is attempting an interlocutory appeal. Interlocutory appeals are governed by 28 U.S.C. § 1292. Parties can file interlocutory appeals as of right of certain orders involving injunctions, certain orders involving receiverships, or of orders which determine the rights and liabilities of parties in admiralty cases. *Id.* at § 1292(a)(1)–(3). None of those circumstances are present here. Additionally, § 1292(b) allows a district judge to certify as appropriate an interlocutory appeal not covered by § 1292(a) if the court believes that “such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” The Order denying Ketchum’s request for reappointment of counsel does not involve a controlling question of law and appellate review of that order will not advance the litigation. Accordingly, Ketchum’s cannot file his interlocutory appeal as of right pursuant to § 1292(a) and the Court declines to certify his interlocutory appeal as appropriate pursuant to § 1292(b). District courts are empowered to review interlocutory appeals and certify them as “frivolous.” *Behrens v. Pelletier*, 516 U.S. 299, 310 (1996); *Yates v. City of*

Cleveland, 941 F.2d 444, 449 (6th Cir. 1991). Ketchum's appeal here is frivolous. Accordingly, his attempted interlocutory appeal will be disregarded, his application to proceed on appeal without prepaying fees will be denied, and trial shall proceed as scheduled.

Accordingly, it is **ORDERED** that Plaintiff Ketchum's interlocutory appeal, ECF No. 92, is **CERTIFIED as frivolous**.

It is further **ORDERED** that Plaintiff Ketchum's application to proceed without prepaying fees, ECF No. 100, is **DENIED**.

Dated: March 14, 2017

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 14, 2017.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager